

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board hereby gives Notice of Intended Action to amend Chapter 2, “General Practice and Hearing Procedures,” and Chapter 3, “Prohibited Practice Complaints,” Iowa Administrative Code.

Items 1 and 2 propose new rules 621—2.23(20) and 621—2.24(20), which include the content of existing rules 621—3.10(20) and 621—3.11(20) and the changes identified in the Board’s ongoing review of its administrative rules. The new rules reflect the transfer of the existing rules to a more appropriate and intuitive location in Chapter 2.

Items 3 through 11 amend existing rules concerning proceedings on prohibited practice complaints which have also been identified in the Board’s ongoing rules review project.

Item 12 rescinds two rules, the content of which is revised and incorporated into Chapter 2 in Items 1 and 2.

Item 13 proposes new rule 621—3.12(20), which implements the Iowa Code section 20.11(3) requirements that the Board appoint a certified shorthand reporter to report prohibited practice proceedings and that the Board tax the reasonable amount of compensation for such reporting and for any transcript requested by the Board, as costs.

These rules do not provide for a waiver of their terms, but are instead subject to the Board’s general waiver provisions found at rule 621—1.9(17A,20).

Any interested person may make written suggestions or comments on the proposed amendments on or before November 4, 2014. Written suggestions or comments should be directed to Michael G. Cormack, Chairperson, Public Employment Relations Board, 510 E. 12th Street, Des Moines, Iowa 50319; or Mike.Cormack@iowa.gov.

Persons who wish to convey their views orally should contact the office of the Public Employment Relations Board by telephone at (515)281-4414 or in person at the Board’s office at the address noted above.

Requests for a public hearing must be received by November 4, 2014.

After review and analysis of this proposed rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 20.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 621—2.23(20):

621—2.23(20) Informal disposition. The board may assign an administrative law judge to assist the parties in reaching a settlement of any dispute which is the subject of an adjudicatory proceeding. However, no party shall be required to participate in mediation or settle the dispute pursuant to this rule. An administrative law judge assisting the parties under this rule shall not serve as a presiding officer in any proceeding related to the dispute. Adjudicatory proceedings may be voluntarily dismissed without consent of the board except as provided in rule 621—3.6(20) and 621—subrule 4.1(3).

ITEM 2. Adopt the following **new** rule 621—2.24(20):

621—2.24(20) Evidence of settlement negotiations. Evidence of proposed offers of settlement of a contested case or a proceeding that may culminate in a contested case shall be inadmissible at the hearing thereon.

ITEM 3. Amend **621—Chapter 3**, title, as follows:

PROHIBITED PRACTICE COMPLAINTS PROCEEDINGS

ITEM 4. Amend rule 621—3.1(20) as follows:

621—3.1(20) Filing of complaint. A complaint that any ~~person, employee, organization or public employer, public employee or employee organization~~ has ~~engaged in or is engaging in~~ committed a prohibited practice ~~under the Act~~ within the meaning of Iowa Code section 20.10(1), that any public employer or the employer's designated representative has committed a prohibited practice within the meaning of Iowa Code section 20.10(2), or that any public employee, employee organization, person, union or organization or its agents have committed a prohibited practice within the meaning of Iowa Code section 20.10(3) may be filed with the agency by any person, employee organization or public employer. ~~A complaint shall be in writing and signed according to these rules, and may be on a form provided by the board. The complaint shall be filed with the board with standing within 90 days following the alleged violation~~ commission of the prohibited practice.

ITEM 5. Amend rule 621—3.2(20) as follows:

621—3.2(20) Contents of complaint. The complaint, which may utilize the form available from the board's Web site, shall be in writing, shall be signed by the complainant or its designated representative, and shall include the following:

3.2(1) The name, address ~~and organizational affiliation, if any,~~ telephone number and e-mail address of the complainant, and, if filed by the complainant's designated representative, the name, title, telephone number and e-mail address of any that representative filing the complaint.

3.2(2) The name and address of the respondent(s) ~~and any other party named therein~~ alleged to have committed the prohibited practice.

3.2(3) A clear and concise statement of the facts constituting the alleged prohibited practice, including the names of the individuals involved in the alleged ~~act~~ act(s), the ~~dates~~ date(s) and ~~places~~ place(s) of the alleged ~~occurrence~~ act(s), and the specific ~~section(s)~~ subsection(s) and paragraph(s) of ~~the Act~~ Iowa Code section 20.10 alleged to have been violated.

ITEM 6. Amend rule 621—3.3(20) as follows:

621—3.3(20) Clarification of complaint. ~~The board~~ Although compliance with technical rules of pleading is not required, the agency may, on either its own motion or motion of the respondent, require the complainant to make the complaint more specific.

ITEM 7. Amend rule 621—3.4(20) as follows:

621—3.4(20) Service of complaint. The complainant shall, within a reasonable time following the filing of a complaint, serve ~~the respondent(s)~~ all named respondents with a copy of the complaint in the manner of an original notice or by certified mail, return receipt requested, together with an agency-approved information sheet regarding mandatory electronic filing. Such service shall be upon the ~~person~~ person(s) designated for service by 621—subrule 2.15(1), and the complainant shall file proof thereof with the agency in accordance with 621—~~subrules~~ subrule 2.15(3) and 621—subrule 16.10(1).

ITEM 8. Amend rule 621—3.5(20) as follows:

621—3.5(20) Answer to complaint.

3.5(1) Filing and service. Within ten days of service of a complaint, the respondent(s) shall file with the ~~board~~ a written agency an answer to the complaint, ~~and cause a copy to be delivered to the complainant by ordinary mail to the address set forth in the complaint.~~ The answer shall be signed by the respondent(s) or ~~the~~ its designated representative ~~of the respondent(s).~~ The answer shall be served through the electronic document management system unless the respondent is exempted from electronic filing in the proceeding, in which case service shall be in accordance with 621—subrules 2.15(2) and 2.15(3), and upon the person who signed the complaint being answered.

~~3.5(2) Extension of time to answer. Upon~~ The parties may agree to an extension of the time to answer and shall inform the agency of their agreement, or the board may, upon application and good cause shown, ~~the board may~~ extend the time to answer to a time and date certain.

~~3.5(3) Contents of answer. The answer shall include a specific admission or denial of specifically admit or deny each allegation of the complaint or, if and may set forth additional facts deemed to constitute a defense. If the respondent is without knowledge thereof sufficient to make an admission or denial concerning an allegation, the respondent answer shall so state and such statement shall operate as a denial. Admissions or denials may be made to all or part of an allegation; but shall fairly meet the circumstances substance of the allegations allegation. The answer shall include a specific statement of any affirmative defense. Matters contained~~ Additional facts set forth in the answer shall be deemed denied by the complainant.

~~3.5(4) Admission by failure to answer.~~ If the respondent fails to file a timely answer, such failure may be deemed by the board to constitute an admission of the material facts alleged in the complaint and a waiver ~~by the respondent~~ of a hearing.

ITEM 9. Amend rule 621—3.6(20) as follows:

~~621—3.6(20) Withdrawal~~ Voluntary dismissal or withdrawal of complaint. ~~A At any time prior to the issuance of a proposed decision (or final decision if heard originally by the board), a complaint or any part thereof may be withdrawn with the consent of the board, and upon conditions the board may deem proper voluntarily dismissed by the complainant. Withdrawal shall constitute a bar to refileing the same complaint or part thereof by the complainant. Following the issuance of a proposed decision, but before the proposed decision becomes the agency's final decision, complaints may be withdrawn only with the consent of the board and upon conditions the board deems proper.~~

ITEM 10. Rescind and reserve rule ~~621—3.7(20)~~.

ITEM 11. Amend rule 621—3.8(20) as follows:

~~621—3.8(20) Investigation of complaint.~~ The board or its designee may conduct a preliminary investigation of the allegations of any complaint. In conducting such investigation, the board may require the complainant and respondent to furnish evidence, including affidavits and other documents if appropriate. If a review of the evidence shows that the complaint has no basis in fact, the complaint may be dismissed with prejudice by the board and the parties notified. ~~Board employees~~ Administrative law judges involved in investigations under this rule shall not act as ~~administrative law judges presiding officers~~ in any proceeding related to the ~~investigation~~ prohibited practice complaint.

ITEM 12. Rescind and reserve rules ~~621—3.10(20)~~ and ~~621—3.11(20)~~.

ITEM 13. Adopt the following new rule 621—3.12(20):

621—3.12(20) Costs of certified shorthand reporters and transcripts.

3.12(1) Initial payment. The agency will arrange for a certified shorthand reporter to report the contested case hearing and request that an original transcript of the hearing be prepared by the reporter for the agency's use. The agency initially shall pay the reporter's reasonable compensation for reporting the hearing and producing the agency-requested transcript.

3.12(2) Taxation as costs. The cost of reporting and of the agency-requested transcript shall be taxed as costs against the nonprevailing party or parties although the presiding officer, or the board on appeal or review of a proposed decision and order, may apportion such costs in another manner if appropriate under the circumstances.

3.12(3) Payment of taxed costs. Following final agency action in a case, the agency will prepare and serve a bill of costs upon the party or parties against whom the costs have been taxed. Those parties shall, within 30 days of such service, remit to the agency the amount specified in the bill of costs. Sums remitted to the agency shall be considered repayment receipts as defined in Iowa Code section 8.2.